

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

JOSEPH LONNELL LEWIS, )  
                            )  
Plaintiff,                )  
                            )  
                            )          No. CIV-16-653-M  
v.                         )  
                            )  
THE STATE OF OKLAHOMA, et al., )  
                            )  
Defendants.              )

REPORT AND RECOMMENDATION

Plaintiff, a state pretrial detainee appearing *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983. On June 16, 2016, the matter was referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B).

On June 17, 2016, Plaintiff was advised that his initial documents were deficient in that he had not submitted an *in forma pauperis* application or paid the filing fee and his 42 U.S.C. § 1983 cause of action was not on the proper form. The Clerk of the Court was directed to mail to Plaintiff by regular mail a copy of the proper 42 U.S.C. § 1983 form and a proper *in forma pauperis form*, and Plaintiff was directed to cure the designated deficiencies by July 5, 2016. Plaintiff was also advised that failure to comply with the Order would result in a recommendation that the action be dismissed without prejudice and without

further notice.

To this date, Plaintiff has not complied with the Court's Order. He has not complied with the Court's Order by (1) either paying the filing fee or submitting an *informa pauperis* application or (2) submitting his Complaint on the proper 42 U.S.C. § 1983 form. Nor has he requested an extension of time to comply with the Court's Order.

The undersigned finds that Plaintiff's failure to comply with this Court's Order, together with the Court's right and responsibility to manage and control its case load, warrants dismissal of this action without prejudice. See Nasious v. Two Unknown B.I.C.E. Agents, 492 F.3d 1158, 1161 n. 2, 1162 (10<sup>th</sup> Cir. 2007)(noting the court applies Fed. R. Civ. P. 41(b) to allow *sua sponte* dismissal for "failure to . . . comply with the rules of civil procedure or court's orders").

#### RECOMMENDATION

Accordingly, it is recommended that Plaintiff's cause of action be dismissed without prejudice. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court on or before August 2<sup>nd</sup>, 2016, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Failure to make timely objection to this Report and Recommendation waives the right to appellate review of both the factual findings and the legal issues contained herein. Moore v. United States, 950 F.2d 656, 659 (10<sup>th</sup> Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned

Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 13<sup>th</sup> day of July, 2016.

  
GARY M. PURCELL  
UNITED STATES MAGISTRATE JUDGE